

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of )  
Section 309(j) ) PP Docket No. 93-253  
of the Communications Act; )  
Competitive Bidding )

To: The Commission

**COMMENTS OF  
DOMESTIC AUTOMATION COMPANY**

Domestic Automation Company ("Domestic"), by its attorneys, hereby respectfully submits its Comments in response to the Notice of Proposed Rulemaking ("Notice") adopted by the Federal Communications Commission ("Commission") on September 23, 1993.<sup>1/</sup>

**I. SUMMARY**

1. In the Notice, the Commission tentatively concludes that its newly enacted auction authority should not apply to applications for radio spectrum which is used principally to support internal, or "private,"

<sup>1/</sup> Notice of Proposed Rule Making, PP Docket No. 93-253, FCC 93-455 (released October 12, 1993).

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communications.<sup>2/</sup> Domestic agrees with this conclusion and provides factual support for excluding Multiple Address System ("MAS") spectrum from the auction process. MAS systems are used primarily to meet licensees' internal needs. The minority of licensees which employ MAS systems on a for-profit basis should not compel the Commission to auction this spectrum. Domestic also supports the adoption of stern measures against trafficking in authorizations won by lottery. While it may be impossible to prevent speculators from seeking MAS spectrum, the Commission should do its utmost to discourage abuse of the lottery process.

## II. PRELIMINARY STATEMENT

2. Domestic is the developer, manufacturer, and vendor of MAS equipment. Among its recent efforts, Domestic has developed a sophisticated, highly efficient MAS technology named "CellNet." Domestic's CellNet technology maximizes spectrum efficiency by dividing standard bandwidth MAS channels into 1.2 kHz wide sub-channels. The sub-channels are then deployed among multiple low-power master facilities within an operating territory which traditionally

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<sup>2/</sup> For purposes of the Notice, and based on the legislative history of the auction statute, the Commission uses the term "private services" to cover only services which are truly private; i.e., those services which support internal and non-subscriber based communications. Notice at ¶ 26. Domestic concurs with the Commission's reading of the legislative history and, herein, uses the term "private" as it is used in the Notice.

would be served by only a single MAS master facility. By using narrowband technology in a low-power, cellular configuration, Domestic's CellNet system can improve MAS system efficiency by 250 to over 600 percent.<sup>3/</sup>

3. Domestic has developed its CellNet technology for the express purpose of enhancing the efficiency of private-use MAS systems. The CellNet system can be used by electric utilities and other entities eligible in the Power Radio Service to perform load management, remote meter reading, as well as other supervisory, control, and data acquisition ("SCADA") functions. CellNet also can support Business Radio Service eligibles' data acquisition activities. Domestic participates in this rule making proceeding in order to encourage the Commission to adopt regulations which ensure that private licensees continue to have routine access to MAS spectrum.

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<sup>3/</sup> CellNet's unique, spectrum efficient configuration is authorized by a rule waiver granted September 9, 1992. See In re Domestic Automation Company, 7 FCC Rcd 6240 (1992 Priv.Rad.Bur.).

### III. DISCUSSION

#### A. Domestic Supports the Commission's Proposal to Exempt "Private Services" From Spectrum Auctions.

4. Based on the language of Section 309(j) of the Communications Act of 1934, as amended, (i.e., the Commission's "auction authority") and its legislative history, the Commission tentatively concludes that "applicants for spectrum used principally for internal uses and not for services to subscribers [should] be exempted from competitive bidding." Notice at ¶ 26. The rationale for exempting spectrum used for internal purposes is alluded to in Section 309(j)(2)(B) of the Act; namely, Congress believes that, while the public should recoup a portion of the value of the radio spectrum when the spectrum is used for subscriber-based communications enterprises, the public interest is better served by allowing applicants intending to use spectrum principally for internal purposes to continue to acquire spectrum by application only. Domestic supports the Commission's decision to exempt applications to license private-use systems from auctions; it is both consistent with the legislation and with the public interest.

5. Domestic also supports the Commission's tentative decisions (1) to apply auction procedures based on whether specific categories of licenses are used principally for

private purposes, Notice at ¶ 31; and (2) to find that spectrum is "principally used" for private purposes when the majority of licensees (or potential licensees) use the spectrum internally a majority of the time, Notice at ¶ 32. Such an approach promotes administrative efficiency. More importantly, it gives potential applicants the certainty they require to plan and develop new communications systems rationally. System planners, such as Domestic's customers, often must choose between competing technologies (e.g., wireline or wireless systems) early in the system design process. In reviewing wireless systems, system planners must know in advance whether they face potential auctions or lotteries for the spectrum they desire.

6. As to the categories identified in the Notice, Domestic concurs with the Commission's tentative conclusions to exclude MAS licenses from auctions. Based on Domestic's experience, the vast majority of operational MAS systems are used to support critical internal operations. Be it in the utility or banking industry, or other industries with dispersed data acquisition requirements, existing MAS systems predominantly serve functions which fall into the private-use category.

**B. The Commission Should Promulgate Stern Regulations Against Trafficking in Licenses Won by Lottery.**

7. One of Congress's main goals in granting the Commission auction authority is to stem the historic, extensive speculation and subsequent trafficking in Commission licenses won by lottery. The Commission's recent experience in opening a filing window for 932/941 MHz MAS spectrum is typical of the increasing speculative interest in radio licenses. Over 50,000 applications were filed for that limited spectrum, many of which undoubtedly were filed solely for speculative purposes.

8. Extensive speculation and trafficking in licenses has greatly disserved the public interest and has prejudiced the interests of applicants with bona fide needs for the spectrum. The flood of applications for the 932/941 MHz MAS spectrum, for example, has imposed massive administrative burdens on the Commission's staff, demanding reallocation of the Commission's limited resources. Despite reallocation of resources, the application flood has caused extensive delays in the licensing process. Worse, rampant speculation in Commission authorizations awarded by lottery has resulted in grossly inefficient license distribution. As the Commission's auction authority recognizes, due to spectrum scarcity, bona fide entities who have lost in past lotteries

often have had to buy licenses from those who never intended to operate systems for their own use.

9. Auctioning off spectrum used principally for subscriber-based services certainly should mitigate speculation in future Commission lotteries, since spectrum for subscriber services appears most desirable. Nonetheless, Domestic foresees the possibility that speculators will continue to take part in Commission lotteries in large numbers (e.g., in future lotteries for MAS spectrum) despite the Commission's existing efforts to discourage it. Speculators seem to perceive inherent value in spectrum almost irrespective of its ultimate use. Without the strictest lottery rules, their activities are unlikely to cease.

10. Consequently, Domestic urges the Commission to adopt strict rules and restrictions to stem speculation and trafficking in licenses won by lottery. The Notice recognizes the Commission's authority to assess payments to prevent unjust enrichment from lotteried licenses. Notice at ¶ 89. Domestic supports such payments in those cases where the circumstances indicate that a licensee simply is trafficking in licenses.

11. Since determining whether trafficking has occurred can be a complex factual question, Domestic also recommends that Commission adopt anti-trafficking restrictions which aim to discourage potential traffickers from participating in Commission lotteries in the first place. This could be accomplished by requiring applicants to post performance bonds, similar financial guarantees, or advance payments on spectrum "user fees" prior to lottery (with only the lottery winner's submission to be retained), or by requiring such payments within days after a lottery winner is announced. In addition, if an applicant wins a lottery then fails to construct its station, or constructs the station but quickly "flips" its license, the Commission should limit that applicant's ability to participate in future lotteries.




WHEREFORE, THE PREMISES CONSIDERED, Domestic Automation Company respectfully urges the Federal Communications Commission to implement its auction and anti-trafficking authority consistent with the views expressed herein.

Respectfully submitted,

Domestic Automation Company

By:

  
Shirley S. Fujimoto  
Marc Berejka  
Keller and Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
(202)434-4100  
Its Attorneys

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